

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA)

v.)

PATRICK CHARLES BURBANK)

Case No.: 2:05cr299-LSC

**DEFENDANT'S RESPONSE TO COURT'S ORDER DATED JULY 3, 2006
AND MOTION TO REINSTATE HEARING ON DEFENDANT'S RULE 35 MOTION**

COMES NOW the Defendant, Patrick Charles Burbank, by and through undersigned counsel, Jennifer A. Hart, and files this Response to the Court's Order dated July 3, 2006 in which it erroneously asserted that this Court no longer has jurisdiction over this case. Pursuant to Federal Rule of Appellate Procedure 4(b)(5):

The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

Fed.R.App.P. 4(b)(5).

Because this Court does, in fact, still maintain jurisdiction in this matter, Patrick Burbank respectfully requests that the hearing on his Motion to Correct Sentence go forward as scheduled on July 14, 2006, or be reset to another date convenient to the Court.

Dated this 6th day of ~~July~~, 2006.

MOTION GRANTED

Respectfully submitted,

THIS 10th DAY OF July, 20 06

/s/ L. Scott Coogler

UNITED STATES DISTRICT JUDGE